

Attachment 1 to CP 233: Draft instrument



ASIC

Australian Securities & Investments Commission

ASIC Corporations (Exempt Proprietary Companies) Instrument 2015/XX

I, <insert name>, delegate of the Australian Securities and Investments Commission, make the following legislative instrument.

Dated 2015

<signature>

<insert name>

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Part 1—Preliminary

1 Name of legislative instrument

This instrument is *ASIC Corporations (Exempt Proprietary Companies) Instrument 2015/XX*.

2 Commencement

This instrument commences on the day after it is registered on the Federal Register of Legislative Instruments.

Note: The register may be accessed at <http://www.comlaw.gov.au>.

3 Authority

This instrument is made under subsection 341(1) of the *Corporations Act 2001*.

4 Definitions

In this instrument:

Act means the *Corporations Act 2001*.

Law means in relation to a company, the former Corporations Law of the State or Territory under which the company was registered immediately before the commencement of the Act; and includes a separate reference to the former Corporations Law of each other State and Territory.

trustee company means:

- (a) in relation to a time before 15 July 2001—an authorised trustee company within the meaning of the Law as in force at the time;
- (b) in relation to a time on or after 15 July 2001 and before 11 April 2011—an authorised trustee company within the meaning of the Act as in force at the time;
- (c) in relation to any other time—a licensed trustee company for the purposes of Chapter 5D of the Act (see section 601RAA).

Part 2—Order

5 Relief from requirement to lodge annual report

Relief

- (1) A large proprietary company (the **Company**) does not have to comply with subsection 319(1) of the Act for a financial year (the **relevant financial year**) where all of the following apply:
 - (a) the Company was an exempt proprietary company within the meaning of the Law on 30 June 1994;
 - (b) the Company has met the definition of exempt proprietary company (as in force under the Law at 30 June 1994) at all times from 30 June 1994 until the deadline for reporting to members for the relevant financial year, or would have met that definition at those times if:
 - (i) declarations 95/0678, 95/0679, 95/0680 and 95/0681 as in force on 31 December 1995 under subsection 349(7) of the Law had continued in effect from that date; and
 - (ii) that definition included proprietary companies (within the meaning of the Law or Act as in force at the relevant time) which meet both of the following requirements:
 - (A) no share in the company is owned by a non-exempt person (as defined in section 69 of the Law as in force on 30 June 1994); and
 - (B) no member of the company is a non-exempt person, other than a trustee company as trustee, executor or administrator of the estate of a dead or mentally or physically infirm person who was registered as the holder of one or more shares in the company and in whose estate no non-exempt person has a direct or indirect interest;
 - (c) the Company was a large proprietary company at the end of its first financial year after 9 December 1995 within the meaning of the Law at that time;
 - (d) the Company is a company (within the meaning of the Law or Act at the relevant time) in respect of which financial statements and financial reports for the financial year ending during 1993 and each later financial year have been audited before the deadline for reporting to members for that year, except for:

- (i) a financial year ending in June or July 1996 if, for that financial year:
 - (A) the financial statements were audited within 1 month after the deadline; and
 - (B) the requirements in Parts 3.6 and 3.7 of the Law (as in force at the time) relating to the preparation, audit, lodgement or sending to members of the financial statements, directors' report and auditor's report were complied with within 1 month after the relevant deadlines or times specified in the Law; and
 - (C) the directors' report disclosed the nature and effect of the relief permitting this deferred compliance; and
- (ii) a financial year commencing from 1 January 2005 to 31 December 2005 (both inclusive) if, for that financial year:
 - (A) the financial report was audited and sent to members within 1 month after the deadline for reporting to members; and
 - (B) the directors' report disclosed the nature and effect of the relief permitting this deferred compliance;
- (e) one of the following applies:
 - (i) the Company is covered by paragraph (1)(b) because of subparagraph (1)(b)(i) and the Company:
 - (A) lodged with ASIC, within 4 months after the end of the first financial year of the Company that ended after 24 April 1997, a notice that the Company wanted ASIC Class Order [CO 98/99] to apply to the Company; and
 - (B) has not been controlled by a foreign company at any time after 9 December 1995 and before the deadline for reporting to members for the relevant financial year; or
 - (ii) the Company is covered by paragraph (1)(b) other than because of subparagraph (1)(b)(i) and lodged with ASIC, within 4 months after the end of the first financial year of the Company that ended after 9 December 1995 (or within such extended period as approved by ASIC), a notice that the Company wanted subsection 317B(3) of the Law (as in force at that time) to apply to the Company;

- (g) the Company has not been:
 - (i) a disclosing entity (within the meaning of the Law or Act at the relevant time);
 - (ii) a borrowing corporation or guarantor body of a borrowing corporation (within the meaning of the Law before 13 March 2000); or
 - (iii) a borrower or guarantor,

at any time after 9 December 1995 and before the deadline for reporting to members for the relevant financial year.